IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA HARRISONBURG DIVISION

MAR 2 7 2013

ROGER L. WOODS)
Plaintiff,	Civil Action No.: 5:11cv131
v.)
CAROLYN W. COLVIN,) By: Hon. Michael F. Urbanski
Commissioner of Social Security,) United States District Judge
Defendant.	,

ORDER

This social security disability appeal is before the court for review of the Report and Recommendation issued in this case by the magistrate judge on March 8, 2013, in which it is recommended that this matter be remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further consideration. The Commissioner has filed an objection to the Report and Recommendation pursuant to Federal Rule of Civil Procedure 72(b).

The court has reviewed the magistrate judge's report, the objections to the report, and the pertinent portions of the administrative record and, in so doing, made a <u>de novo</u> determination of those portions of the report to which the Commissioner objected. The court finds that the magistrate judge was correct in concluding that the ALJ's determination is not supported by substantial evidence in the record. Given the vocational expert's ("VE") grossly inaccurate estimate of the number of positions available for thread separators and almond blanchers, the magistrate judge concluded that her testimony as a whole is unreliable as a matter of law. The Commissioner objects to this finding and argues that the error is harmless. The court cannot agree. For the reasons stated in the report and recommendation and from the record itself, it is

clear that the testimony of the VE is so incredible that the ALJ could not have reasonably relied

upon it. As such, "[a] finding based on unreliable VE testimony is equivalent to a finding that is

not supported by substantial evidence and must be vacated." Overman v. Astrue, 546 F.3d 456,

464 (7th Cir. 2008). Thus, the court overrules the Commissioner's objection and adopts the

magistrate judge's recommendation that this case be remanded to the Commissioner for further

vocational assessment.

It is therefore **ORDERED** and **ADJUDGED** that the Commissioner's motion for

summary judgment (Dkt. # 12) is **DENIED**, the report and recommendation (Dkt. # 16) is

ADOPTED in its entirety, this case will be **REMANDED** to the Commissioner for further

consideration consistent herewith pursuant to sentence four of 42 U.S.C. § 405(g), and this

matter is STRICKEN from the active docket of the court.

IT IS SO ORDERED.

The Clerk is directed to send a certified copy of this Order to all counsel of record.

Entered: March 27, 2013

Michael F. Urbanski

United States District Judge

(s/ Michael F. Urbanski

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